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19 SAKEENAH MCCULLOUGH and

20 DANIEL GUNTHER

21 UNITED STATES DISTRICT COURT

22 NORTHERN DISTRICT OF CALIFORNIA

23 SAKEENAH MCCULLOUGH and DANIEL
24 GUNTHER

25 Case No.: 3:13-cv-04596 JSW

26 Plaintiffs,

27 **STIPULATION FOR ENTRY OF
28 PROTECTIVE ORDER**

29 v.
30 XEROX CORPORATION, a corporation, and
31 DOES One through Thirty-five, inclusive,

32 Defendant.
33
34 Complaint filed: June 27, 2013
35 First Amended Complaint filed: July 26, 2013

36

1 For the reasons set forth below, the parties to this action and their respective
 2 counsel believe that good cause exists for entry of a protective order, which will govern the
 3 production of certain documents and provision of certain categories of deposition testimony
 4 during discovery in this action. Therefore, through their respective attorneys of record,
 5 Plaintiffs Sakeenah McCullough and Daniel Gunther and Defendant Xerox Corporation
 6 hereby stipulate to the following protective order for the purpose of preventing unnecessary
 7 disclosure or inappropriate use of confidential, business sensitive, proprietary and/or trade
 8 secret information contained in certain documents, deposition testimony or discovery
 9 responses provided during the course of this lawsuit.

10

11 1. During this action, one or more parties may produce certain documents,
 12 provide written discovery responses and/or provide or elicit deposition testimony containing
 13 medical records or information, confidential, highly sensitive, proprietary and/or trade secret
 14 business information, including information concerning, among other things, the identity,
 15 contacts, proposals and requirements of Xerox customers, internal Xerox policies and
 16 procedures, pricing of Xerox products and services, compensation data and formulas,
 17 strictly internal investigation protocols or findings, nonpublic financial data, employment and
 18 financial information regarding non-parties, and sales or marketing plans or strategies
 19 (hereinafter collectively referred to as "Confidential Information").

20

21 2. With respect to documents produced by a party which contain
 22 Confidential Information, that party or its counsel may stamp or otherwise label that
 23 document with the word "Confidential" prior to production, which shall render that document
 24 and the information contained in it subject to this protective order. For documents
 25 containing particularly sensitive confidential, proprietary or trade secret information whose
 26 disclosure could cause competitive or other serious injury to the producing party, the
 27 producing party may stamp or otherwise label that document with the words "Confidential-
 28 Attorneys' Eyes Only," which shall render that document and the information contained in it

1 subject to this protective order. Stamping or otherwise marking "Confidential" or
 2 "Confidential-Attorneys' Eyes Only" on the first page of any multipage document shall
 3 automatically designate all pages of the document as subject to this protective order, unless
 4 otherwise expressly indicated by the party producing that document. With respect to written
 5 discovery responses provided by a party which contain Confidential Information, either that
 6 party or its counsel may designate a particular response as containing such information by
 7 stamping or otherwise marking the word "Confidential" or "Confidential-Attorneys' Eyes
 8 Only" on the page or pages containing that discovery response or by explicitly stating within
 9 the response itself that the information contained therein is confidential and subject to a
 10 protective order. Either of those designations shall render that entire response subject to
 11 this protective order.

12

13 3. At any deposition in this action, a party and/or its counsel may
 14 designate particular testimony containing Confidential Information as "Confidential" or
 15 "Confidential-Attorneys' Eyes Only" and therefore subject to the terms of this protective
 16 order. In the event a party or its counsel makes such a designation, the court reporter shall
 17 on each page of the transcript containing such designated testimony include the statement
 18 "Confidential - Subject To Protective Order," or the statement "Confidential-Attorneys' Eyes
 19 Only - Subject To Protective Order." All deposition testimony of a witness which is
 20 designated "Confidential" shall be contained in a separate transcript, the first page of which
 21 shall bear the legend "Confidential - Subject To Protective Order," or the legend
 22 "Confidential-Attorneys' Eyes Only - Subject To Protective Order." At the time of a
 23 designation of testimony as "Confidential-Attorneys' Eyes Only", any person in the room
 24 who is not permitted to receive information designated as "Confidential-Attorneys' Eyes
 25 Only" pursuant to paragraph 4, will leave the deposition for the duration of the designated
 26 testimony.

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1 4. Any document, information or testimony designated as "Confidential"
 2 shall not be used for any purpose whatsoever other than in connection with the prosecution
 3 or defense of this lawsuit. Moreover, such document/information/testimony shall not be
 4 delivered, exhibited, furnished or disclosed in whole or in part to any person, firm, entity or
 5 organization except to (a) counsel of record for the parties in this action; (b) persons
 6 regularly employed by the law firm representing plaintiff and/or the firm representing
 7 defendants; (c) court reporters transcribing testimony of witnesses in this action; (d) court
 8 personnel in connection with the performance of their responsibilities relative to this action;
 9 (e) expert witnesses and consultants retained for the purpose of assisting counsel for a
 10 party in defending or prosecuting this action; (f) one or more of the parties themselves
 11 (including in-house counsel and their staff); or (g) a witness at deposition to the extent
 12 he/she agrees on the record to be bound by this order and either authored the document or
 13 information in question or has a need to know or be shown the document or information in
 14 the course of providing testimony. However, nothing herein shall in any way limit a party's
 15 ability to use or disclose documents/information/testimony which that party or its own
 16 counsel has designated "Confidential."

17
 18 5. Any document, information or testimony designated as "Confidential-
 19 Attorneys' Eyes Only" shall not be used for any purpose whatsoever other than in
 20 connection with the prosecution or defense of this lawsuit. Moreover, such
 21 document/information/testimony shall not be delivered, exhibited, furnished or disclosed in
 22 whole or in part to any person, firm, entity or organization except to (a) the attorneys of
 23 record in this case, (b) employees of those attorneys actively involved in the prosecution or
 24 defense of this action, (c) in-house counsel and their staff, (d) court reporters transcribing
 25 deposition testimony in this action, (e) independent experts and consultants retained by a
 26 party, and (f) a witness at deposition who agrees on the record to be bound by this order
 27 and either authored the document or information in question or has a need to know or be
 28 shown the document or information in the course of providing testimony. The receiving

1 party shall not receive, be informed of, or have access to Confidential - Attorneys' Eyes Only
 2 documents, information or testimony except pursuant to the prior written consent of the
 3 producing party or by Court Order. However, nothing herein shall in any way limit a party's
 4 ability to use or disclose documents/information/testimony which that party or its own
 5 counsel has designated "Confidential" or "Confidential-Attorneys' Eyes Only."

6

7 6. Prior to receiving Discovery designated as "Confidential-Attorneys'
 8 Eyes Only," each person, including counsel, shall sign an acknowledgment that they have
 9 read and agree to abide by this Order. Third-party experts and consultants shall affirm that
 10 they have been retained by counsel for a party to this litigation and are not otherwise
 11 employed by or affiliated with any party or any competitor of any party. The receiving
 12 party's counsel shall maintain the original signed acknowledgments, and upon request by
 13 counsel for the producing party shall be provided to the producing party's counsel.

14

15 7. Any person to whom delivery, exhibition or disclosure is made of any
 16 document, information or testimony described in paragraphs 2 or 3 above shall be subject to
 17 the provisions of this protective order. Prior to delivery, exhibition or disclosure of covered
 18 documents/information/testimony to the persons qualified to receive it/them under
 19 paragraphs 4 and/or 5, counsel for the party making disclosure shall provide each such
 20 person a copy of the protective order and shall secure from that person a signed
 21 confidentiality acknowledgement in the form attached hereto as Exhibit A. That
 22 acknowledgement shall state that the person receiving or seeing the covered
 23 document/information/testimony has read this order, that he/she may not and shall not
 24 divulge any document, information or testimony designated "Confidential" or "Confidential-
 25 Attorneys' Eyes Only" except in strict accordance with the terms and conditions of this order
 26 and that he/she will not utilize any document, information or testimony designated
 27 "Confidential" or "Confidential-Attorneys' Eyes Only" for any purpose other than in
 28 connection with the prosecution or defense of this lawsuit. All originals of signed

1 confidentiality acknowledgements shall be maintained by counsel for the party responsible
2 for making the disclosure and shall be made available to the producing party's counsel upon
3 reasonable request. However, nothing herein shall require a disclosing party or its counsel
4 to obtain a signed confidentiality acknowledgement prior to submitting
5 documents/information/testimony to witnesses at either trial or during a deposition.

6

7 8. Any party or counsel who files or intends to file a paper or other
8 document with the Court which reflects, contains or includes any
9 document/information/testimony designated as "Confidential" or "Confidential-Attorneys'
10 Eyes Only" by an opposing party or that party's counsel pursuant to the terms of this
11 protective order, including any copies, reproductions, abstracts, summaries or quotations of
12 or from such document/information/testimony, shall make an application to the judge to
13 whom the papers are directed to have that particular document/information/testimony filed
14 under seal pursuant to Local Rule 79-5.1, or in the alternative shall conspicuously label all
15 pages of the document itself as "Confidential – Subject to Protective Order."

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17 9. Nothing herein shall prevent any party from bringing an appropriate
18 motion upon regular notice before the Court, in strict compliance with Local Rules 37-1 and
19 37-2, to have a "Confidential" or "Confidential-Attorneys' Eyes Only" designation of a
20 document/information/testimony lifted in whole or in part or to determine whether the use or
21 disclosure of such document/information/testimony should be restricted other than in
22 accordance with this protective order. Furthermore, nothing herein shall affect any party's
23 right to make a formal motion upon regular notice to the Court for a protective order
24 pursuant to the Federal Rules of Civil Procedure and this Court's Local Rules with regard to
25 any particular document/information/testimony, including for the purpose of seeking
26 restrictions greater than those specified herein.

1 10. Within 60 days from the final termination of this action, including any
2 appeals, the parties and their counsel shall either (1) return all materials designated
3 "Confidential" or "Confidential-Attorneys Eyes Only," together with any and all copies,
4 summaries and excerpts thereof, to counsel for the party producing such materials or
5 (2) destroy all such materials and copies thereof and certify in writing to the counsel for the
6 party producing such materials that they have been destroyed. In accordance with this
7 paragraph, the parties and their counsel shall also return to counsel or destroy all extracts or
8 summaries of documents/information/testimony designated "Confidential" or "Confidential-
9 Attorneys' Eyes Only," except for those materials which in the reasonable, good faith
10 judgment of counsel constitute attorney work product.

11

12 11. If a party or its counsel inadvertently permits the production or
13 disclosure of documents or testimony containing Confidential Information without
14 designating it confidential in accordance with this protective order, that party or its counsel
15 may thereafter designate the material as "Confidential" or "Confidential-Attorneys' Eyes
16 Only" by identifying the specific document/testimony in a letter to opposing counsel and at
17 that time designating it accordingly. From the date of receipt of any such letter, the
18 party/counsel which has received the document/testimony shall treat it in accordance with
19 the terms of this protective order, subject to further direction from the Court.

20

21 12. The obligations of confidentiality contained in this protective order shall
22 remain effective following the termination of the action and the Court shall retain jurisdiction
23 to enforce all provisions of this order as well as to remedy any violation of it. In addition, the
24 Court shall at all times have jurisdiction to resolve any dispute which may arise under the
25 terms of this protective order upon a regularly noticed motion, including but not limited to
26 issues concerning whether some document/testimony has been improperly designated.

27

28

1 13. The designation of any document, information or testimony shall not be
2 construed as an admission of relevance or admissibility. This order may only be introduced
3 into evidence by a party in connection with a motion or other proceeding to enforce the
4 terms or obtain clarification of this order.

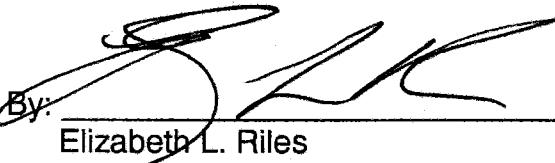
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6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7

8 Dated: May 19, 2014

9 BOHBOT & RILES, LLP

10 By: 

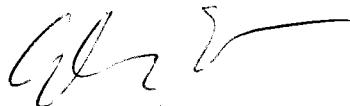
11 Elizabeth L. Riles

12 Attorneys for Plaintiffs

13 SAKEENAH MCCULLOUGH and DANIEL
14 GUNTHER

15 Dated: May 19, 2014

16 MILLER LAW GROUP
17 A Professional Corporation

18 By: 

19 Adam J. Tullman

20 Attorneys for Defendant

21 XEROX CORPORATION

22 The parties are admonished that all future stipulations and requests for Court Orders shall be
23 accompanied by a proposed order.

24 Dated: May 28, 2014



EXHIBIT A TO PROTECTIVE ORDER

I acknowledge that I have received, carefully read and fully understand the protective order entered by the Court in this matter. I agree to at all times strictly comply with all terms of that order and understand that any violation of that order may subject me to sanctions by the Court, including possible contempt.

Dated: _____, 2014.

4811-4374-1210, v. 2

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